United States Court of Appeals for the Second Circuit



JOINT APPENDIX

76-7354

UNITED STATES COURT OF APPEALS

For the Second Circuit.

69 Civ. 442.

JAMES M. MORRISSEY, JOSEPH PADILLA, RALPH IBRAHIM, Individually and on behalf of the members of the NATIONAL MARITIME UNION OF AMERICA,

Plaintiffs-Appellees,

against

JOSEPH CURRAN, SHANNON WALL, WILLIAM PERRY, MARTIN SEGAL, ABRAHAM E. FREEDMAN and LEON KARCHMER,

Defendants,

JCT 27 1976 Defendants-A

JOSEPH CURRAN, SHANNON WALL,

On Appeal From the United States District Court

For the Southern District of New York.

JOINT APPENDIX.

Charles Sovel, Attorney for Defendants-Appellants 346 W. 17th Street New York, N. Y. 10011

Duer & Taylor, Attorneys for Plaintiffs-Appellees 74 Trinity Place New York, N. Y. 10006

PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX

	Page
Relevant Docket Entries	la
Notice of Motion for Allowance of Counsel Fees	6a
Affidavit of Joseph P. Altier, Esquire, in support of Application for Counsel Fees	8a
Affidavit of Arthur E. McInerney, Esquire, in opposition to Motion for Allowance of Counsel Fees	20a
Affidavit of Ned R. Phillips, Esquire	23a
Transcript of Proceedings before Honorable Dudley B. Bonsal of May 4, 1976	27a
Memorandum Order dated June 20, 1976 denying Application for Counsel Fees	78a
Order dated July 8, 1970	79a
Order dated September 11, 1974	81a
Affidavit of Arthur E. McInerney, Esquire	84a

RELEVANT DOCKET ENTRIES.

69 Civil 442 James M. Morrissey et. al v. Joseph Curran et al.

69 CIVII 442 J	ames M. Morrissey et. al v. boseph carrain so
Date	Proceedings
1969 February 4	Filed complaint and issued summons
February 18	Filed Answer of Deft. Leon Karchmer, ST&B
May 23	Filed Memorandum Opinion #35895, Bonsal, Jr. Defendants' motion to dismiss plaintiffs' action or, in the alternative, for summary judgment, is denied. Plaintiffs' motion for summary judgment is granted, and judgment will be enteredin favor of plaintiffs, directing defendants to account; enjoining defendant Trustee from paying any benefits under the Pension Plan to non-officers, and directing the Trustees to return to the NMU all moneys received by the Trustees for the benefit on non-officers, with int. from the dates the moneys were received. Plaintiffs are entitled to costs, disbursements and attorneys' fees out of the amounts returned by the Trustees to the NMU, in such amounts as may be approved by the Court. Settle Order On Notice. (mailed notice)
July 3	Filed Memo endorsed on motion ret. 6/17/69 Ordered pltffs motion is denied without prejudice to pltffs seeking further relief be appropriate application if the defts should violate the order of the Court. Bonsal, Jr. Mailed notice.
July 3	Filed Memo endorsed on defts motion for reargument. Ordered motion is denied, etc. Bonsal, Jr. mailed notice.
1970 May 22	Filed true copy from USCA, Docketed a Judgment #70,747: Orders & judgment they are affirmed in part & reversed in part & that action is remanded for further proceedings in compliance with the

proceedings in compliance with the opinion of this court with costs to be

taxed against the deft's-appellants. Clerk. Judg. Ent. Ent. 5-28-70.m/n

Relevant Docket Entries

Date 1970 July 6

Proceedings

Filed Memorandum: See an appropriate order being signed and filed herewith. Bonsal, Jr.

July 5

Filed order that the order of this court & judgment entered 7-18-69, is in all respects confirmed. June 24, 1969 Amendments to the NMU constitution, are declared to be void and deft's are enjoined from acting in reliance upon them. Order of this court filed July 3, 1969 is vacated. Deft's serve & file the pltff's with a of the account not later than July 31, 1970, pltff's shall serve & filed objections to the accounting if any, within thirty days after service up them, pltff's shall commence discovery within 60 days. The costs allowed to pltff's against the deft's in the court of appeals amounting to \$513.71 be made a judgment of this court in favor of the plti.'s against the deft's. Ordered that the deft's are enjoined from employing counsel paid or to be paid with union funds. Bonsal, J.

1972 January 11

Filed Memorandum and Order. Judgment will be entered directing the Pension Plan to pay NMU the \$520,283.38 which it received from NMU for the account of non-officers, together with interest to date. Judgment will be entered in favor of the Pension Plan against the defendant Perry in the amount of \$222,200, improperly paid to him, together with interest to date. The foregoing constitutes, the court's findings of fact and conclusions of law; F.R.Civ.P.52(a) Settle Judgments on Notice. Bonsal J.M/n

February 18

Filed Judgment #72,266. Ordered that judgment in favor of the National Maritime Union of America against the NMU officers Pension Plan in the principal amount of \$520,283.38 and interest \$153,939.22 in the total amount of \$674,222.60. Ordered

Relevant Docket Entries.

Date

Proceedings
that judgment in favor of the MMU Officers
Pension Plan against deft William Perry
in the principal amount of \$222,200.00
and in interest in the amount of \$41 107.00
or a total amount of \$263,307.00
Bonsal J. Judgment ent. 2-18-72 Clerk. ent.
2-23-72 M/n

June 29

Filed Opinion #38618--Motions of defts'
Curran, Wall, Segal, Freedman & Karchner
at the end of pltffs' case are granted
with respect to payments made to nonofficer employees other than Perry.
Motions are denied with respect to payment
made to deft Perry by the Pension Plan
on Jan. 16-69. The hearing will be continued on July 7, 1972, at 10 AM in Rm
618 at which time these defts' may
present their evidence. So ordered--Bonsal,
J. m/a

October 22

Filed Opinion #38858. Deft Freedman is surcharged with respect to the \$222,200 paid by the officers Pension Plan to Perry and which has not been repaid. The application to surcharge the defts' Segal, Karchman, Curran and Wall is denied and the action is dismissed with respect to them. Settle Judgment on Notice. So Ordered Bonsal J.

November 15

Filed Judgment #72,963. Ordered that the clerk of the court enter judgment dismissing the complaint with prejudice and on the merits as against the defts. Joseph Curran, Shannon Wall, Martin Segal and Leon Karchmer, also ordered that the clerk of the court enter judgment in favor of the NMU Officers Pension Plan against deft Abraham E. Freedman in the principal ant. of \$50,540.50 making a tot.of \$272,740.50 and it is further ordered that upon satisfaction of this judgment by deft Freedman, he shall be subrogated to the rights of the NMU Officers Pension Plan in their judgment against deft William Perry in the amt. of \$263,307.00 enteredin this court on Feb. 18, 1972 and it is further ordered that the defts.

4a
Relevant Docket Entries.

Date

Proceedings
Curran and Wall are directed as officers of the NMU to issue a check payable to the firm of Duer & Taylor in the sum of \$111,864.00 which sum is hereby fixed and allowed as and for reasonable value of the legal services and disbursements rendered and incurred by said firm to date. So Ordered Bonsal J. Judgment Ent. 11-5-72 m/n

1973 January 10

Filed Defts. Order to Show Cause, Re: Order Granting Relief, Ret before Bonsal J. 1 1/15/73.

January 10 Filed defts. Joseph Curran & Shannon Wall memo of law in support of application.

January 15 Filed memo endorsed on Order to Show Cause dtd. 1/10/73. Motion denied after argument. So Ordered Bonsal J. m/n

September 13

Filed ORDER & JUDGMENT #74,743: Ordered that pltff's motion to hold, deft's J. Curran, S. Wall, M. Segal, Abraham E. Freedman & L. Karchmer, in contempt is denied. Pltff's motion for the allowance of additional attys fees is denied, pltff's motion for entry of judgment, against the National Surety Corp. is denied. Pltff's motion for, reargument is denied. Motions of deft's Martin Segal & Leon Karchmer, for reargument is denied, except as otherwise provided as indicated. Judgment in favor of the N.M.U. Officers' Pension fund in the, amount of \$31,906.72 against deft. Martin Segal. Judgment in favor, of the N.M.U. Officers' Pension fund against Leon Karchmer in the, amount of \$30,155.08. Etc. Hearing be held on 9-27-74 at 10 A.M. Room 706 on application by pltff's attys for fees. Bonsal, Jr. Judgment Ent. Clerk. m/n Ent. 9-17-74.

1976 March 31

Filed deft's Curran & Shannon Wall affidavit & notice of cross-motion Re: attys fees & for disbursements on appeals, ret. 4-5-76.

Relevant Docket Entries.

<u>Date</u>	Proceedings
April 9	Filed affidavit of Ned. R. Phillips in opposition to motion of pltff's Re: fees.
April 9	Filed affidavit of Ned R. Phillips Re: fees
April 14	Filed affidavit of A.E.McInerney in response to affidavits of Ned Phillips
June 30	Filed memo endorsed on deft's Curran & Wall motion filed 3-31-76: Motion is denied. Bonsal, J.
July 26	Filed deft's Curran & Wall notice of appeal to the USCA from an order denying motion Re: Union pay. Mailed copies to Duer & Taylor Simpson Thacher & Bartlett, Charles Sovel & Herman Cooper

6a

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

JAMES M. MORRISSEY, JOSEPH PADILLA, RALPH IBRAHIM, individually and on behalf of the members of the NATIONAL MARITIME UNION OF AMERICA,

Plaintiffs,

69 Civ. 442 (DBB)

-against-

JOSEPH CURRAN, SHANNON WALL, WILLIAM PERRY, MARTIN SEGAL, ABRAHAM E. FREEDMAN and LEON KARCHMER,

Defendants.

SIRS:

PLEASE TAKL NOTICE that defendant Joseph Curran and Shannon Wall will cross-move (Hon. Dudley B. Bonsel, U.S.D.J.) in Room 705 on the 5th day of April, 1976, or as soon thereafter as counsel can be heard pursuant to Title 29 United States Code, Section 501 for an order directing that the firm of Bromsen, Gammeman, Altier & Wayne, Esqs., be allowed and paid the sum of \$16,111.50 for their services and \$1,493.36 for disbursements on appeals herein and directing that the said monies be paid out of the National Maritime Union treasury together with such other and further relief as seems proper under the circumstances.

Dated; New York, March 29, 1976.

Yours, etc.,

BROMSEN, GAMMERMAN, ALTIER & WAYNE

RY:

Joseph P. Altier
A member of the firm
Attorneys for Defendants
Joseph Curran and Shannon Wall

To: DUER & TAYLOR, Esqs.
Attorneys for Plaintiffs
74 Trinity Place
New York, N. Y. 10006

SIMPSON, THACHER & BARTLETT, ESQS. One Battery Park Plaza New York, N.Y.

HERMAN E. COOPER, ESQ. 500 Fifth Avenue New York, N.Y. 10036

CHARLES SOVEL, ESQ. 346 West 17 Street New York, N.Y. 10011

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

JAMES M. MORRISSEY, JOSEPH PADILLA, RALPH IBRAHIM, individually and on behalf of the members of the NATIONAL MARITIME UNION OF AMERICA,

Plaintiffs, 69 Civ. 442 (DBB)

-against-

JOSEPH CURRAN, SHANNON WALL, WILLIAM PERRY, MARTIN SEGAL, ABRAHAM E. FREEDMAN and LEON KARCHMER,

Defendants.

STATE OF NEW YORK))SS: COUNTY OF NEW YORK)

JOSEPH P. ALTIER, being sworn, says:

I am a member of the firm of Bromsen, Gammerman, Altier & Wayne attorneys for defendants Joseph Curran and Shannon Wall and make this affidavit in support of an applicat on for an allowance of attorney's fees and disbursements in the following amounts:

Attorney's fees - \$16,111.50

Disbursements - \$ 1,493.36

This firm has represented defendants Joseph Curran and Shannon Wall since January of 1973. Annexed hereto is an itemized list of the efforts expended on behalf of the defense of present and past presidents of the National Maritime Union. In 1973, in general, the services involved review of the record below, research and briefing the

successful defense of defendants Curran and Wall to the Court of Appeals and opposition to petition for writ of certiorari; in 1974 services involved the defense of motions before this court; in 1975 services involved generally appeals, briefs and oral arguments to the Court of Appeals.

No part of the above fees or disbursements have been paid by defendants (or anyone else) to date.

The major portion of the billing hours herein contained are attributed to me. They are billed at the rate of \$75.00 an hour. I am a partner in this law firm and have been so for the past ten years. I have been with this firm since 1962.

I was admitted to the Bar in the State of Connecticut in 1956, to New York in 1957 and to New Jersey in 1967. From 1957 to 1961 I was an Assistant United States Attorney in the Southern District of New York and was Chief of Trials for the Civil Division. Upon leaving that office I was an associate with the law firm of Regan, Goldfarb, Powell and Quinn.

In each decision reflecting upon my clients there was no culpability of any kind found by this court or any of the courts above. Curan and Wall were completely exculpated, there being a specific finding of no fault on their part, no negligence on their part and no bad faith on their part.

10a

As can be seen from the cited cases in the memorandum in support hereof, where the officers of a union are exculpated concerning charges of wrongdoing, their legal expenses in defense of their actions are chargeable to the union.

WHEREFORE, it is respectfully prayed that the relief sought herein be granted.

JOSEPH P. ALTIER

Sworn to before me this 29th day of March, 1976.

ITEMIZATION OF ATTACHED BILL

Meeting - Ch.Sovil re Curran and Wall defense; research on record; telephone calls	6 1/2	hours
Conf. Ch. Sovel re Curran & Wall litigation - draft brief	3 1/2	hrs.
Brief - Curran & Wall; research, record	4	hrs.
First draft Curran & Wall brief	12	hrs.
First draft - Curran& Wall brief	7	hrs.
Curran & Wall brief - work and revision of first draft	6 .	hrs.
Conference & review of first draft of brief	4	hrs.
Revision of draft of brief: Freedman brief review; office meeting Ch.Sovil	88	hrs.
Revision of first draft of brief	8	hrs.
Revision of first draft of brief	2 1/2	hrs.
•		
Curran & Wall brief draft	8	hrs.
Curran & Wall brief draft	3 1/2	hrs.
	Wall defense; research on record; telephone calls Conf. Ch. Sovel re Curran & Wall litigation - draft brief Brief - Curran & Wall; research, record First draft Curran & Wall brief Curran & Wall brief - work and revision of first draft Conference & review of first draft of brief Revision of draft of brief: Freedman brief review; office meeting Ch. Sovil Revision of first draft of brief Revision of first draft of brief Curran & Wall brief draft of brief	Wall defense; research on record; telephone calls Conf. Ch. Sovel re Curran & Wall litigation - draft brief Brief - Curran & Wall; research, record First draft Curran & Wall brief 12 First draft - Curran & Wall brief 7 Curran & Wall brief - work and revision of first draft Conference & review of first draft of brief Revision of draft of brief; Freedman brief review; office meeting Ch. Sovil Revision of first draft of brief 8 Revision of first draft of brief 2 1/2 Curran & Wall brief draft 6

Curran & Wall brief draft	12	hrs.
Curran & Wall brief draft	12	hrs.
Curran & Wall brief - review	2.	hrs.
Curran & Wall brief - review	4	hrs.
		•
Curran & Wall brief; conf. Martin K. of Sovel's office	4	hrs.
Review of printed draft of brief	2	1/2 hrs.
Curran & Wall galley review	3	1/2 hrs
Curran & Wall galley review	2	hrs.
Review of briefs re: Curran & Wall	1	1/2 hrs.
Reading affidavit in opposition to Perry's motion		1/4 hr.
		•
Review of papers		1/4 hr.
•		•
Client meeting re oral argument; phone calls, correspondence; review of transcript	4	hrs.
	•	
Conference-C. Sovel; preparation for oral argument; review of transcript	8	hrs.
Preparation for oral argument	1	hrs.
	Curran & Wall brief - review Curran & Wall brief - review Curran & Wall brief; conf. Martin K. of Sovel's office Review of printed draft of brief Curran & Wall galley review Curran & Wall galley review Curran & Wall galley review Review of briefs re:Curran & Wall Reading affidavit in opposition to Perry's motion Review of papers Client meeting re oral argument; phone calls, correspondence; review of transcript Conference-C. Sovel; preparation for oral argument; review of transcript	Curran & Wall brief draft Curran & Wall brief - review Curran & Wall brief - review 4 Curran & Wall brief; conf. Martin K. of Sovel's office Review of printed draft of brief Curran & Wall galley review Curran & Wall galley review Curran & Wall galley review Review of briefs re; Curran & Wall Reading affidavit in opposition to Perry's motion Review of papers Client meeting re oral argument; phone calls, correspondence; review of transcript Conference-C. Sovel; preparation for oral argument; review of transcript

April 11, 1973:		
J.P.Altier	Argument - Fed. Court of Appeals	5 hrs.
April 18, 1973:		
J.P.Altier	Telephone calls re decision	1 hr
R.Kraus (C)	To court - telephone calls - to Ch. Sovel's office	2 1/2 hrs
June 26, 1973:		
J.P.Altier	Review of petition for rehearing	1/4 hr.
July 11, 1973:		
I.Gammerman	Discussions with J.P.Altier; review of papers, affidavits; dicatation of affidavit	1 1/2 hrs.
J.P.Altier	Tel.call re Perry motion	1/4 hr.
July 13, 1973:		
J.P.Altier	Review of petition for rehearing	3/4 hr.
July 16, 1973:		
J.P.Altier	Discussion with I.Gammerman re taxation of costs	1/2 hr.
I.Gammerman	Discussion with J.P.Altier re taxation of costs	1/2 hr.
August 3,1973:		
J.P.Altier	Conf. with F.Rose re research	1/2 hr.
F.Rose (C)	Conf. with J.P.Altier re research	1/2 hr.
August 16, 1973:	•	
J.P.Altier	Phone call.Mr.Gruber; review correspondence	1/2 hr
August 17, 1973:	•	•
R.Kraus (C)	Fesearch	1 hr.
Sept. 21, 1973:		
J.P.Altier	Review judgments	1/4 hr

October 2, 1973:		
J.P.Altier	Review respondent's brief; Tel. call Ch.Sovil	3/4 hr.
October 9, 1973:		
E. Hart (C)	Research re time to reply to petition	1 hr.
J.P.Altier	Tel. Call Ch.Sovel; answer to writ	3/4 hr.
October 10,1973:		
E.Hart (C)	Research	3/4 hr.
JPAltier	Tel. Calls Ch. Sovel	1 1/4 hr
October 11, 1973:		
E. Hart (C)	Research re writ	1/2 hr
October 26, 1973:		
J.P.Altier	Appeal brief to U.S.Supreme Court	6 hrs.
October 26, 1973:		
J.P. Altier	Proofreading brief	1 hr.
Nov. 14, 1973:		
J.P.Altier	Review of replies - U.S.Supreme Court	1/4 hr
Nov. 15, 1973:	•	
J.P.Altier	Conference - Ch.Sovel	2 hrs.
Jan. 23/74:	•	•
J.P.Altier	Re: Morrissey v Curran - phone calls Ch.Sovel & McInerney; review motion papers; numerous calls re: adjourn- ment of motion	2 1/2 hrs.
28- Jan./30, 1974:		•
J.P.Altier	Phone call - Ch.Sovel numerous calls & messages	1 1/2 hrs.
Jan. 31, 1974:		
J.P.Altier	Review and dictating reply affidavit	14 hr.

Feb. 4, 1974:		
J.P.Altier	Review of papers; prep. for oral argument; appearance & argument USDC/SD re Morrisey v. Curran	3 1/2 hrs
April 8, 1974:) (1) (1) (1) (1) (1) (1) (1) (1) (1) (1
T.P.Altier	Review supp.answers Mortissey v. Curran	1/4 hr
May 6, 1974:		•
J.P.Altier	Re:Morrissey v. Curran & Wall review court decision; motion papers; dictation affidavit in opposition	1 hr.
June 5, 1974:		
J.P.Altier	Re: Morrissey v. Curran Reading papers	1/2 hr.
June 12, 1974:		
J.P.Altier	Review of correspondence	1/2 hr.
June 19, 1974:		
J.P.Altier	Re: Morrissey v. Curran Review of correspondence	1/2 hr.
July 1-15/74:		
J.P.Altier	Re: Morrissey v. Curran Revie. of correspondence	2 1/4 hrs.
July 11, 1974:		
J.P.Altier	Answering affidavits; tel. call Ch. Sove	3/4 hr.
July 19, 1974:		
J.P.Altier	Review of correspondence Re: Morrissey v. Curran	.1/4 hr.
Sept. 8-13/74:		
J.P.Altier	Review of correspondence and orders	1/2 hr

	16a	
Sept. 25, 1974:		
J.P.Altier	Calls re hearing before J. Bonsal	1/2 hr.
0ct. 6, 1974:		
J.P.Altier	Preparation & court appearance Re: Curran adv. Morrissey	? hrs.
0ct. 16, 1974:		
J.P.Altier	Re: Morrissey v.Curran review of papers	1/4 hr.
oct. 21, 1974:		
J.P.Altier	Re: Morrissey v. Curran review of papers	1/4 hr.
Dec. 3, 1974: J.P.Altier	Re: Morrissey v.Curran Answering affidavit	1 hr.
Dec. 5, 1974:		
J.P.Altier	Re: Perry v NMU Adj. of stay SDNY	1/4 hr.
Dec. 12, 1974:		
J.P.Altier	Phone call - Ch. Sovel	1/2 hr.
Dec. 13, 1974:		
J.P.Altier	Review of correspondence	1/4 hr.
	Perry v. NMU Pre-trial - USCD-Morrissey	2 1/2 hrs. 2 1/2 hrs.
	Pre-trial - USDC - Wimbush	2 1/2 ms.
Dec. 16, 1974:		•
J.P.Altier	Motion- USDC - Perry v. NMU Review of affidavit and memo	3 1/2 hrs.
Dec. 19, 1974:		
J.P.Altier	Re: Morrissey v. Curran Review of correspondence and memo decision	1 hr.
Dec. 23, 1974:		
J.P.Altier	Re: Morrissey v. Curran Review of correspondence	1/2 hr.

Dec. 30, 1974:	17a	
J.P.Altier	Tel. call - McInerney Re: Morrissey v. Curran	1/4 hr.
Jan. 14, 1975:		
J.P.Altier	Re: Morrissey appeal Phone calls	1/4 hr.
Jan. 17, 1975:		
J.P.Altier:	Re: Morrissey - review corres.	1/2 hr.
Jan. 31, 1975:		•
J.P.Altier	Re: Morrissey v. Curran Dictation-reply affidavit	1/2 hr.
Feb. 4, 1975:		
J.P.Altier	Re: Morrissey v. Curran Brief and affidavit	1 1/2 hrs.
Feb. 10, 1975:		
J.P.Altier	Re: Morrissey v.Curran Court appearance	1 1/2 hrs.
March 5, 1975:		
J.P.Altier	Re: Morrissey v.Curran Tel. call - Gruber	1/4 hr.
March 11, 1975:		
J.P.Altier	Re: Morrissey v. Curran #1 Review of brief (no reply needed)	1/2 hr.
March 21, 1975:		
J.P.Altier	Re: Morrissey v.Curran #1 Review of correspondence	1/4 hr.
March 27, 1975:		
J.P.Altier	Re: Morrissey v Curran #1 Phone call Ch. Sovel Dictation brief - Court of Appeals	1; hr.

April 9, 1975:			
J.P.Altier	Re: Perry v. NMU Review of Notice of Motion	1	/4 hr.
April 14, 1975:			
J.P.Altier	Re: Perry v. NMU Dictation of brief & notice of motion	3	hrs.
April 23, 1975:			•
J.P.Altier	Re: Morrissey v. Curran Argument - Court of Appeals	4	hrs.
Nov. 18, 1975:			
J.P.Altier	Re: Morrissey v. Curran Review of 2nd Circuit opinion; Phone call - McInerney re appeal attorney's fee consent		3/4 hr.
Nov. 20, 1975:			
J.P.Altier	Re: Morrissey v.Curran Tel. Call - McInerney; dictation	,	1/2 hr.
November 26,1975:			
J.P.Altier	Re:Morrissey v. Curran Review of brief Tel. call re costs	1	hr.
January 12, 1976:	•		
J.P.Altier	Review of correspondence	3	1/4 hr.

ITEMIZATION OF DISBURSEMENTS

Printing of briefs	\$ 1,186.89
Court of Appeals docket fee	25.00
Photostats	16.02
Secretarial services - overtime	240.90
Messenger service	16.02

UNITED STATES DISTRICT COURT SCUTHERN DISTRICT OF NEW YORK

JAMES M. MORRISSEY, JOSEPH PADILLA, : RALPH IBRAHIM, individually and on behalf of the members of the NATIONAL: MARITIME UNION OF AMERICA,

Plaintiffs,

69 Civ. 442 (DBB)

-against-

JOSEPH CURRAN, SHANNON WALL, WILLIAM PERRY, MARTIN SEGAL, ABRAHAM E. FREEDMAN and LEON KARCHMER,

AFFIDAVIT

Defendants.

STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

Arthur E. McInerney, being duly sworn, deposes and says:

I am a member of the firm of Duer & Taylor attorneys for the plaintiffs herein and make this affidavit in opposition to the application of the defendants' Joseph Curran and Shannon Wall application for an allowance of a fee to their counsel, Bromsen, Gammerman, Altier & Wayne.

The exhibits annexed to the original affidavit in support of this application were not served upon us but The Court on the motion asked about services which were rendered in <u>Wimbush</u> v. <u>Curran</u> contained in the exhibits. So apparently at least some of the hours were not expended in connection with this lawsuit.

But in any event, no part of the services rendered

to Messrs. Curran & Wall should be charged to and paid by the union.

Counsel retained by the union, have not opposed Mr. Altier's application. But this is not strange because union counsel have never opposed any application for fees except those made by plaintiffs counsel.

Indeed, the affidavit submitted by union's counsel Ned Phillips (paragraphs 4 - 6) supports their application against his retainer's interest.

But the fact remains, that the interest of Messrs.

Curran and Wall throughout this litigation was adverse to the interests of the membership of the union.

Their hands were not clean.

They could have taken action which could have avoided this lawsuit - or, at the very least, shortened it. They did not do so.

Messrs. Segal and Marchiner were held liable for their legal fees (for their personal defense), despite their exoneration.

Messrs. Curran and Wall were not without fault and should not be indemnified for their Counsel fees under the circumstances of this case.

WHEREFORE, Plaintiffs respectfully pray that the application of defendants Curran and Wall be in all

respects denied.

/s/ Arthur E. McInerney
Arthur E. McInerney

Sworn to before me this 5th day of May, 1976.

/s/ John S. Chapman Notary Public UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

JAMES M. MORRISSEY, JOSEPH PADILLA, RALPH IBRAHIM, individually and on behalf of the members of the NATIONAL MARITIME UNION OF AMERICA,

Plaintiffs,

AFFIDAVIT

-against-

69 Civ. 442 (DBB)

JOSEPH CURRAN, SHANNON WALL, WILLIAM PERRY, MARTIN SEGAL, ABRAHAM E. FREEDMAN and LEON KARCHMER,

Defendants.

STATE OF NEW YORK)

) ss:

COUNTY OF NEW YORK)

NED R. PHILLIPS, being duly sworn deposes and says:

- 1. I am a member of the law firm of Phillips & Cappiello presently counsel to the National Maritime Union of America (hereinafter NMU) and submit this affidavit on behalf of NMU in support of an application for indemnification from plaintiffs James Morrissey, Joseph Padill. and Ralph Ibrahim of monies which NMU may be ordered by this Court to pay to counsel for defendants Curran and Wall for fees and disbursements.
- 2. This application is being made in this manner and at this time for the convenience of the Court and the parties, in that all parties are presently before the Court and all aspects of the matter of attorneys' fees can be decided at the same instance.
- 3. Article 21, Section 4, of the NMU Constitution provides as follows:

- 6. Pursuant to Article 21, Section 4(b), upon NMU's payment of counsel fees and expenses of defendants Curran and Wall its right of indemnification from plaintiffs Morrissey, Padilla and Ibrahim, the "members...responsible for bringing the action or proceeding," ripens.
- 7. Plaintiffs have moved for payment of their counsel fees and expenses in this action from "the Officers Pension Fund, now called the NMU Staff Pension Plan."
- 8. If this Honorable Court should direct said Plan to pay the counsel fees and expenses of plaintiffs Morrissey, Padilla and Ibrahim, and the NMU is ordered to pay counsel fees and expenses of defendants Curran and Wall, it would only be just, as well as expeditious, if it should direct said Plan to set aside from the amount it is to pay on behalf of plaintiffs Morrissey, Padilla and Ibrahim, if any, the sum NMU is directed to pay on behalf of defendants Curran and Wall, if any, and to pay such sum to NMU to so use. To do otherwise would require NMU to begin a separate action to collect from the aforenamed plaintiffs the sum they would be required to reimburse the Union under its Constitution. This type of circuitous action is wholly unnecessary since all parties are presently before the Court.

wherefore, deponent respectfully prays that the matter of attorney's fees and disbursements be set down for a Grinnell hearing; and that if this Honorable Court should grant in whole or in part plaintiffs' motion to have their counsel fees and

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expenses paid by the Officers Pension Fund, (now NMU Staff
Pension Plan) and if this Court should grant in whole or in part
the cross-motion of defendants Curran and Rall to have their
counsel fees and expenses paid by the NMU, it should direct
said Plan to set aside from the sum it is to pay on behalf of
plaintiffs the amount NMU is to pay as the counsel fees and
expenses of defendants Curran and Wall and to indemnify NMU
in such amount.

/s/ Ned R. Phillips
NED. R. PHILLIPS

Sworn to before me this 8th day of April 1976

/s/ Gloria Rosengarten

1	UNITED STATES DISTRICT COURT	
2	SOUTHERN DISTRICT OF NEW YORK	
3	x	
4	JAMES M. MORRISEY, JOSEPH PADILLA, : RAIPH IBRAHIM, individually and on :	
5	behalf of the members of the :	
6	MATIONAL MARITIME UNION, : Plaintiffs, :	
7	vs. : 69 Civ. 4#2DBB	
8	JOSEPH CURRAN, SHANNON WALL,	
9	WILLIAM PERRY, MARTIN SEGAL, : ABRAHAM E. FREEDMAN, and :	
10	LEON HARCHMER, : Defendants. :	
11 12	: X May 4, 1976 10:00 a.m.	
13	Before: HON. DUDLEY B. BONSAL, District Judge	
14	APPEAFANCES	
15	DUER & TAYLOR, ESQS.,	
16	Attorneys for Plair tiffs,	
17	BY: ARTHUR MC INERNEY, ESQ., and JOHN S. CHAPMAN, ESQ., of Counsel.	
18	PHILLIPS & CAPPIELLO, ESQS.,	
19	Attorneys for NMU Staff Pension Plan and NMU,	
20	BY: NED R. PHILLIPS, ESQ., of Counsel.	
21	SIMPSON THATCHER & BARTLETT, ESQS., Attorneys for Defendant Martin Segal,	
22	BY: RCNALD GINNS, ESQ., of Counsel.	
23	JOSEPH ALTIER, ESQ., Attorney for Defendants Curran and Wall.	
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mcjt

THE COURT: Gentlemen, I think there are two things that got on the agenda this morning. One was a Grinnell type hearing in connection with the application of the plaintiffs for payment of legal fees and disbursements to Mssrs. Duer and Taylor by reason of the recent appeal to the Court of Appeals.

There is another matter that I have here which is a cross motion on behalf of the defendants Joseph Curran and Shannon Wall for the payment of legal services. I have not received any papers, I think, other than motion papers on that.

Were any papers filed?

MR. ALTIER: I believe Mr. McInerney filed.

MR. MC INERNEY: I didn't file in opposition to Mr. Altier's motion. I just filed in opposition to the affidavit of Mr. Phillips.

MR. ALTIER: I am sorry.

MR. MC INERNEY: I thought, your Honor, that we could take care of the opposition on this hearing today.

THE COURT: I just want to mention that to you.

I think I would like to take the Grinnell hearing first and then if we have an opportunity, I would like to hear both sides on the other motion.

MR. MC INERNEY: We haven't filed any papers, your

mcjt

Honor.

As your Honor knows, the application is made and the NMU is represented here. The NMU has taken the position that they are going to cross claim against my client, Mr. Morrisey individually and, of course, Mr. Morrisey had no personal benefit out of this entire lawsuit. He brought back a lot of money to the NMU. I would certainly think it would be ingratitude to make this motion and the part of the NMU.

THE COURT: I will hear that later.

MR. GINNS: I am associated with Simpson Thatcher & Eartlett. We represent Mr. Segal in these proceedings, one of the former trustees of the pension plan. We do not have any fees in issue in this hearing this morning and really have no position on the applications which have been made.

Insofar as Mr. Segal is no longer a trustee and the plan is being represented by another attorney today, we would ask to be excused from the hearing.

THE COURT: Any objection to that?

MR. ALTIER: None.

THE COURT: Mr. Phillips, you represent the plan; is that correct?

MR. PHILLIPS: Yes, your Honor.

1 mejt THE COURT: You have any objection to excusing 2 3 him? He wants to go away. MR. PHILLIPS: None. 4 THE COURT: I take it there is no objection to 5 6 that. 7 MR. MC INERNEY: Thank you. I spoke to Mr. 8 Cooper yesterday and he asked me to make the same applica-9 tion to the Court on his behalf. He previously represented

THE COURT: Yes.

Mr. Karchmer.

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Gnetlemen, in connection with the Grinnell hearing, we have the papers here. What would your pleasure be? Would you want Mr. McInerney to take the stand? I think really we had this once before.

MR. MC INERNEY: Yes.

THE COURT: And the question is what these services were to the extent that they were rendered in support of the judgement or whether they were rendered for some other purpose.

Would you mind taking the stand?

MR. MC INERNEY: Not a bit.

THE COURT: All right.

ARTHUR E. MC INERNEY, after having been

duly sworn, testified as follows:

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Segal and Karchman.

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In those conversations I was advised that they intended to appeal from the judgement that had been entered, and as a matter of fact an appeal was taken by Mr. Cooper.

Now, while waiting for the appeal that I had been promised would be filed by Simpson Thatcher & Eartlett on behalf of Mr. Segal, I filed an appeal on behalf of the plaintiffs.

THE COURT: You filed your appeal after Mr. Cooper filed his appeal?

THE WITNESS: After Mr. Cooper filed his appeal, and subsequently I wrote a letter to MR. Cooper at Simpson Thatcher & Bartlett, Mr. Cantor's attention, I believe, --

Is that letter annexed to the papers?

It is recited in my affidavit at page 3 and it reads this way:

"While we are willing to cooperate with you fully in the preparation of the record on appeal and the joint appendix, we cannot share in the expense.

"As you know, the only reason we have filed the cross appeal is because of Mr. Marchman's appeal and our anticipation of an appeal by Mr. Segal," which anticipation has since been fulfilled.

"If you withdraw the appeal filed by you on behalf of Mssrs. Karchman and Segal, we would naturally be pleased

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mcjt

McInerney/direct

			2	to withdraw the appeal filed on behalf of the membership of
			3	the NMU.
e 70-a			4	Very truly your,"
			5	Now, that letter was written on October 23, 1974,
			6	prior to the time any work or any substantial work was done
			7	on the appeals themselves.
			8	THE COURT: Wouldn't it be helpful if a copy of
			9	that letter were put in the record here?
			10	THE WITNESS: It is annexed to my affidavit, your
			11	Honor. It is recited in my affidavit.
			12	THE COURT: I think I would like the text of the
			13	letter. Have you got it there?
		•	14	THE WITNESS: Yes, here it is, your Honor.
			15	THE COURT: All right. I would like that marked
			16	as plaintiffs' Exhibit 1.
			17	MR. ALTIER: No objection.
	xx		18	(Pla stiffs' Exhibit 1 marked for identification.)
		2	19	Q Following the writing of Exhibit 1, what happened?
			20	A Well, I had several conversations with both Mel
			21	Cantor at the firm of Simpson Thatcher & Bartlett and Herman
			22	E. Cooper, and I expressed to them my feelings that the
			23	appeal here would not justify the expenses involved on the
			24	appeal.
			25	MR. PHILLIPS: I object, your Honor, to the self-

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serving statement. I think he should tell us what he actually did.

THE COURT: You said you had conversations.

THE WITNESS: I had these conversations with them, your Honor, and they refused to withdraw --

THE COURT: Let us not say they refused. The appeal remained.

MR. PH._LIPS: Your Honor, if this will expedite this proceeding, I will not challenge -- if it is intended to establish that a certain number of hours were put in, I don't think there is any question as to that and I do not intend to seriously raise that issue. The only question, as I visualize it in this Grinnell hearing, is the extent to which all of the effort, or a portion of the effort was successful, and that would be - the matters for that would be pretty well determined by what was sought by both sides and what the Court of Appeals --

I would allow Mr. McInerney, as he has indicated here - and I think that is a consideration - that he did this work and he says he did this work because the appeal was filed by the defendants and he had to go to the Court of Appeals, but otherwise he might not have gone and he might have saved these legal fees.

Is that right?

THE WITNESS: I think it is even stronger. Not that I might not have gone. I had committed myself not to go.

McInerney/direct

THE COURT: All right, go chea.

- Q Just hitting the high spots, what was the work on this appeal that you did and that the firm of Duer & Taylor did?
- the most part prepared the joint appendix which I reviewed with them and which finally was filed in the Court of Appeals. Thereafter, as prepared, drafted and redrafted, distilled and reducibled our brief to the Court of Appeals. Several briefs were filed in opposition to our brief and in support of the position to the respective defendants that so, part of the 39 percent which this Court had decided previously should be returned, should be paid. I read and digested those briefs. I studied the law and prepared a reply brief to those briefs. I conferred with my partner, Mr. Chapman, and he assisted me in drafting and redrafting the briefs.

I argued the appeal in the Court of Appeals and the results were that this Court was affirmed with, I would say, in my opinion, a very strong dissent by Juige Hays and

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with a modification which resulted in an additional \$7,059.84 being returned, in addition to the 39 percent which this Court had decided should be returned.

McInerney/direct

That resulted in a benefit to the trustee in excess of \$80,000.

THE COURT: You say that was as a result of this appeal?

THE WITNESS: In affirming your Honor's decision which had directed that 39 percent be returned.

THE COURT: By reason of the appeal, the only additional benefit, I take it, was the \$7,000?

THE WITNESS: Yes, your Honor.

THE COURT: I wanted to get that straight.

THE WITNESS: Yes, that was the only additional benefit.

THE COURT: All right.

THE WITNESS: In reading the dissent, I felt that we owed it to Judge Hays and to the membership of the NMU to attempt to have the matter reviewed by the entire Court. I thought that it was of significant importance to the bar generally and to 501 actions generally, and prepared and drafted a petition for rehearing and rehearing en banc and submitted the same, and after approximately -- well, after several months, that petition was denied.

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The total expenditure in hours by me and members of my firm was 165 1/2 hours of which 140 1/2 were put in by me personally and 25 were put in by Mr. Chapman. That was up until the time we made this application. Since that time it has been an additional couple of hours put in, I would say.

Q You said that Judge Hays dissented. What was the nature of that dissent?

THE COURT: I read the opinion. I don't think we need to get into that. Thank you.

Q Do you have an opinion of reasonable value of the services described in the petition application?

A Yes, I do. I would say in my opinion the reasonable value of our services is \$22,500. I would like to add to that that the firms representing Messrs. Karchman and Segal, as I understand it, were paid in excess of \$22,500.

THE COURT: I don't think I need to worry about that.

THE WITNESS: I understand.

THE COURT: Only that the reasonable value is that

figure. This is based on 150 1/2 hours?

THE WITNESS: 165 1/2 hours.

THE COURT: The total, Mr. Chapman's and yours?

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1	mcjt McInerney/direct 526
2	THE WITNESS: Yes, sir.
3	THE COURT: What does that come out to?
4	THE WITNESS: The total hours are 165 1/2, 150 1/2
5	plus 25.
6	THE COURT: That comes to about 100 some odd?
.7	THE WITNESS: I would say in the area between
8	\$135 and \$150 an hour.
9 .	Q Were disbursements incurred?
10	A There were disbursements incurred. The disburse-
11	ments totalled \$617.47.
12	THE COURT: Have we got a statement of those?
13	THE WITNESS: I don't know that they have been
14	submitted. I would offer this to be marked for identification
15	I offer it in evidence.
16	(Plaintiffs' Exhibit 2 marked for identification.)
17	MR. PHILLIPS: I object to the receipt of this in
18	evidence. It is a self serving statement and does not con-
19	tain a single document in support. There are no bills.
20	THE COURT: Let me take a look at it and see what
21	it contains.
22	MR. PHILLIPS: It does not even look like a regular
23	ledger sheet maintained in the regular course of business
24	by a bookkeeper.
25	THE WITNESS: I might say, your Honor, it was

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Then there was a \$50 fee which was paid in October 197 - to the clerk of the Court of Appeals which was a filing fee. There was a charge of \$5.30 which was made by the clerk in the Court of Appeals and a bond again of \$20, which was the repeat premium because the appeal had

1	mcjt McInerrev/direct 529
2	gone for more than a year, and another Southern District
3	Court Reporters bill for stenographic minutes for \$33.60
4	and photostats.
5	THE COURT: What was that for?
6	THE WITNESS: More stenographic minutes be-
7	fore your Honor. I don't know exactly what those were.
8	THE COURT: I think I would like the bills.
9	THE WITNESS: I can submit the bills.
10	THE COURT: Submit the bills and indicate
11	what these were for. I would like to know that.
12	THE WITNESS: Yes, your Honor, and photostats
13	of \$12.50.
14	MR. PHILLIPS: I would reserve, of course,
15	the right to make any comments as I receive copies of
16	the bills.
17	THE COURT: Yes.
18	Q What do they total?
19	A The total is \$617.47.
20	Q Were all of those disbursements in your
21	opinion necessary and reasonable?
22	Α Yes.
23	MR. PHILLIPS: May I see plaintiffs' Exhibit
24	17
25	MR. CHAPMAN: Yes. I would like to offer

McInerney/direct

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mcjt

that in evidence.

	3	THE COURT: It is received.
xx	4	(Plaintiffs' Exhibit 1 received in evidence.)
	5	MR. CHAPMAN: I will offer 2 for identifica-
	6	tion in evidence also.
	7	THE COURT: I think I will allow 2 once you
	. 8	post what the bils are with us.
	9	THE WITNESS: Yes, your Honor.
	10 .	THE COURT: Is there any objection if he puts
	11	the bills and attaches that and I will receive the whole
	12	thing as Exhibit 2?
	13	MR. PHILLIPS: Yes, I will expressly indicate
	14	that I have withdrawn any objection.
	15	THE WITNESS: Yes.
xx	16	(Plaintiffs' Exhibit 2 received in evidence.)
	17	MR. CHAPMAN: That is all.
	18	CROSS EXAMINATION
	19	BY MR. PHILLIPS:
	20	Q This affidavit, which is 1 in evidence, re-
	21	cites:
	22	"On October 23, 1974 in an effort to avoid
	23	the expenses and legal fees incurred in further litiga-
	24	tion, I wrote the attorney for Messrs. Marchmer and Segal.
	25	Then it goes on to quote the letter. Is

that a true stat nt?

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Α Yes.

I expect this was done by the use of the ordinary mails, is that correct, counsellor?

McInerney/cross

Yes.

How long did you wait for a reply to that request before you took any further action in connection with the appeals?

I had several telephone conversations almost daily with Mr. Mel Cantor and Herman Cooper about this and I took no further action until they took action. In other words, they insisted on going ahead and they were --

THE COURT: Lo you remember how long after that letter that you first learned an appeal had been filed, I guess by Mr. Cooper?

THE WITNESS: The appeal by Mr. Cooper was filed previous to my letter.

THE COURT: It was filed before your letter? THE WITNESS: Yes. I had asked him if he would withdraw the appeal and he refused to withdraw it and then after that, I would say a matter of days.

Q A matter of several days?

Before I did anything, because I had spoken to hem on the telephone.

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that I would agree to withdraw my appeal if they would withdraw theirs.

McInerney/cross

Q And this amendment was the amendment which sought to reverse the finding of the Court below that there was no basis for holding Messrs. Curran and Wall in contempt?

A I beg your pardon?

Q The substance of this amendment, as distinguished from your original notice of appeal, was to hold Messrs. Curran and Wall in contempt.

A May I see it, please?

Q Certainly. Cr rather, appeal from the refusal of this Court to hold them in contempt.

I think the record will speak for itself.

- A May I answer the question?
- Q All right.

A At that time we considered the holding of this Court which had found its facts previously that --

Q Would you address yourself to a responsive answer?

A I am trying to be responsive.

Q The question calls for a simple yes or no.

Is it not a fact that the substance of the amended or second notice of appeal filed on October 23 was to appeal

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE NEW YORK, N.Y. - 791-1029

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denying your motion to hold Mr. Segal in contempt; is that

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correct?

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1	mejt	McInerney/cross	535
2	A	Yes, I did.	
3	Q	You appealed from the order of this Court	
4	denying you	r motion to hold Mr. Freedman in contempt;	
5	is that cor	rect?	
6	A	Yes, I did.	
7	Q	And you appealed from the order of this Co	urt
8	denying you	r motion to hold Mr. Karchmer in contempt;	
9	is that cor	rect?	
10	A	Yes, I did.	
11	Q	And the Court of Appeals affirmed this Cou	rt
12	in all resp	ects with regard to the individuals whom I	
13	have just n	amed; isn't that correct?	
14	A	Yes, it did.	
15	Q	Now, in connection with your appeal you	
16	sought to r	ecover from Messrs. Segal and Karchmer a	
17	total of \$9	7,071.05; isn't that correct?	
18	A	The numbers, I think, are taken directly	
19	out of the	opinion of the Court of Appeals.	
20	Q	I would be glad to furnish you a copy.	
21	A	It was approximately this amount. I don't	;

A It was approximately this amount. I don't recall the exact amount.

Q And the Court of Appeals did not sustain your position in that respect; is that correct?

A What was that?

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The Court of Appeals did not sustain your	
position in that respect; is that not correct?	
A The Courtof Appeals affirmed Judge Bonsal	
with a minor modification.	
Q In affirming Judge Bonsal with respect to	
the \$37,071.05, which you sought to recover from Messrs.	
Segal and Karchmer, the Court of Appeals did not sustain	
your position; isn't that correct? You took a position	
contrary to that of Judge Bonsal in his order; isn't that	
correct?	
A That is right.	
You likewise sought to recover from Mr. Freedman	
\$85,829.11; isn't that correct?	
A That is correct.	
Q And the Court of Appeals did not sustain	
your position with respect to that; isn't that true?	
A Yes, that is correct.	
Q You also sought to recover monies paid to	
Mr. Estein and his firm in connection with their efforts	
to collect the Perry judgement in the amount of \$26,611.49;	
isn't that correct?	
A That is correct.	
a And the Gourt of Appeals did not sustain your	

position with regard to that; isn't that correct?

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A That is correct.

Q In fact, the only recovery, the only additional benefit mandated by the Court of Appeals was \$7,059.84; is that correct?

A That is correct.

as to the amount of effort expended on this appeal in connection with each and every item that was raised before the Court of Appeals, each of which, of course, took your full, undivided attention; isn t that correct? Do you have any kind of a breakdwon?

A Because I haven't tried to compartmentalize in that fashion, but I would say in my opinion, particularly in view of the fact that I did not see any real advantage to go ahead with these appeals, in the first place. I would say that 95% of our efforts --

I asked you a very simple question: did you or did you not make a breakdown? I think as a lawyer you know perfectly well that a witness should not give his state of mind or reasons for actions. He should try to address himself to the facts.

THE COURT: It isn't all that easy. Have a little sympathy for the witness. But I think the question is fair. But I think he is trying to ask you this: is

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Sounds approximately correct.

MR. PHILLIPS: I have nothing further. Thank you.

McInerney/cross

THE COURT: Anything else?

REDIRECT EXAMINATION

BY MR. CHAPMAN:

You wanted to give a reason for something. It escapes me what it was about.

MR. PHILLIPS: I object to the form of the question. I think it is an invitation to a self serving statement and is improper in any case.

THE COURT: There is no jury here. You are laboring over something.

THE WITNESS: Two things. The first thing is on the reason for taking an appeal on the Curran and Wall situation, I was well aware that this Court had held with respect to Mr. Curran as a fact -- the evidence indicates that Curran dominated the people who had anything to do with thepayments from the officers' pension plan to Perry. Karchmer testified, "Well, to go into JOE is a very fearful process."

With that in mind and with the fact that the Court had found as a fact that Curran had dominated everything and that Wall was the Secretary-treasurer and that

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before the institution of this action to try and get this money back for the union, it was my feeling that if they had lifted, either one of them had lifted their little finger, they could certainly have avoided this entire litigation with all of the tremendous expense and so forth.

THE COURT: I think that is sort of a far cry from what I have to do here, which is to determine the fees on appeal.

THE WITNESS: I understand.

In connection with Mr. Phillips' recital of the different claims, I would like to say a few words.

Judge Hays had a word to say about that in his dissenting opinion in speaking of the defendant Karchmer's and defendant Segal's fees at the time:

"It relies entirely upon the tenuous presumption that there is a necessary correlation between the monetary size of a claim and the legal work required to support or refute it. While ignoring such criminal factors as the complexity of the relevant legal issues and the amount of difficulty encountered and time spent in their resolution."

I would suggest to the Court that my entire

problem was not compartmentalized the way Mr. Phillips would have it appear on my cross examination, which was a very, very adroit cross examination, I will admit, but the entire picture was before me and I had the task of doing the best I could for the membership.

THE COURT: I think you have answered it.

Really, I think the point is made here as to what was accomplished in the Court of Appeals, on the one hand, and in taking the appeal you couldn't really compartmentalize.

THE WITNESS: No, I couldn't.

THE COURT: I think I really understand that and I think the burden of Mr. Phillips' argument, his own and his cross examination, is that compensation should be based on the benefits obtained from the appeal.

Is that what you are really arguing?

MR. PHILLIPS: I believe that that is the thrust of the decisions.

THE COURT: I think that was your point.

Q Were the appellants seeking to reverse that part of Judge Bonsal's decision which required them to pay back 39% of their --

Yes, they were.

MR. PHILLIPS: I have nothing further of the

I simply suggest that it casts a shadow on

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1	mejt 543
2	the question. We do not have any witnesses as to the
3	conversation so that that will remain forever enshrined
4	in silence. The fact is that Mr. McInerney has been
5	rather well compensated in his efforts on behalf of the
6	union and I think that the \$7,000 recovery should be the
7	sole measure of whatever
8	THE COURT: Whatever legal fees?
9	MR. PHILLIPS: Yes, whatever the disbursement
10	he incurred should be reduced proportionately to the same
11	extent as to the recovery.
12	THECOURT: I am not sure about that. When I
13	see the bills on the disbursements, I would like to con-
14	sider that more carefully. I would like to hear from
15	Mr. McInerney now that he is off the stand. What do you
16	have to say?
17	MR. MC INERNEY: I would call to your Honor's
18	attention that at one of our hearings, I think our last
19	Grinnell hearing, at that time the defendants Karchmer
20	and Segal were promising your Honor an appeal in the event

Mr. Cooper said, "No, unfortunately I think

that you were found , as you indicated you were going to

ind, and you said, "These things never end, do they?"

it would be premature to award Mr. McInerney in a point

at which it has not yet finally been determined whether

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or not he had succeeded in the recovery by indemnification.

"THE COURT: I suppose he will ask for an additional fee if you appeal for supporting my position; is that correct?

"MR. MC INERNEY: I would say --

"THE COURT: I would think so. I got your point in mind."

The fact of the matter is, your Honor, that I had no information to go ahead with these appeals. I was placed in a position of having a bear by the tail.

They were insisting on it. In connection with the finding of Mr. Curran and Mr. Wall in contempt and the representation — that would not have resulted in any pecuniary benefit. Bloom and Epstein were representing Mr. Curran and Mr. Wall at that time and Mr Bloom of the firm of Bloom & Epstein was paid in excess of \$85,000 by the union for those services, and there has never been any evidence that Mr. Curran and Mr. Wall have come up with one thin dime for their representation ever since the order of July 6 or July 8, 1970, when your order enjoined them from using counsel fees paid with union funds.

My position was that the fact that Bloom and Epstein were their counsel and were paid in union fur is, that it followed like the night the day that the \$85,000

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I didn't care whether they called it contempt or they just said the money was paid when it shouldn't have been paid. The finding of contempt, although a drastic thing to ask, was the only means I had of having that accomplished and the same applied to Mr. Freedman. I have no feeling of finding anybody in contempt for that matter, but I think that the union had been paying bills in the face of that order of July 8th, and I realized that is all finished and done with. It has been determined and affirmed and that is the end of it. But that was my position and that is all I could do.

THE COURT: All right, thank you, Mr. McInerney.

MR. PHILLIPS: We are on a very narrow track here. There is no jury and I suppose this argument is received, but I would remind the Court that it is totally irrelevant to any of the issues before us today.

THE COURT: All right, you made your point.

Is there anything further on the Grinnell hearing that anybody would like to say?

MR. PHILLIPS: I take it that there is no opposition from Mr. Altier.

MR. ALTIER: I don't know what my position is.

I reviewed my bills and my disbursements with both counsel.

1 546 mc.jt 2 Nobody seems to lodge any objection with respect to my 3 itemization of the bills or disbursements over the three and a half years that I have represented Curran and Wall. 5 I don't think there is any objection to it. MR. MC INERNEY: Mr. Altier has furnished me 7 with copies of checks he has received from the National 8 Maritime Union of America for other representation through-9 out that period, some of which has to do with the Perry 10 situation, and that comes to a little in excess of \$4,000. 11 THE COURT: I'm afraid you got me a little 12 confused. I want to straighten that out. Are you ad-13 dressing yourself, Mr. Altier, to this cross motion? 14 MR. ALTIER: That is correct, your Honor. 15 THE COURT: I want to be sure we are finished 16 with the Grinnell hearing. 17 MR. MC INERNEY: Yes. 18 THE COURT: We are finished with the Grinnell 19 hearing, so now you are addressing yourself to your cross 20 motion for an order directing that your firm be allowed 21 or paid \$16,111.60 for their services and \$1,493.36 for 22 disbursements. 23 MR. ALTIER: That is correct.

THE COURT: On these same appeals?

MR. ALTIER: That is correct.

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1 mcjt 547 2 THE COURT: Directing that the money be paid 3 out of the National Maritime Union treasury? MR. ALTIER: That is correct, your Honor. 5 THE COURT: All right. That is a separate 6 one and you started off to say something on that, so 7 please go right ahead. MR. ALTIER: If I may, your Honor. 9 My firm was retained in late 1973 or early 10 1974. We had agreed to represent Messrs. Curran and 11 Wall on the basis of \$75 an hour plus the disbursements. 12 I have kept itemizations of the litigations because we 13 were retained in a number of different litigations. I 14 have itemized each of the different litigations. 15 THE COURT: Is this all representations, be-16 cause the notice of motion says for disbursements on ap-17 peals here. 18 MR. ALTIER: Appeals with respect to Curran 19 and Wall. 20 THE COURT: Not only this one for prior ones? 21 All the ones from 1973 on? 22 MR. ALTIER: Yes, for the past three and a 23 half years. If you look at the exhibit annexed to my 24 moving affidavit, to which I think there is no objection

at all by either counsel, you will see I itemized those

548 1 mcjt day by day over the past three and a half years. It 2 involves the first string of appeals before the Supreme 3 Court of the United States back down again, motions and 4 5 this latter round. THE COURT: Probably services in this Court 6 7 and the Appellate Court. 8 MR. ALTIER: That is correct. It covers the 9 entire services of my law firm for this particular case. At the same time that we represented Curran 10 and Wall for this particular case for the itemizations 11 12 that your Honor has before you, we represented those individuals in another case and we represented the NMU in 13 14 a separate case that was a contract case. Before appearing here, I asked Mr. McInerney 15 whether there was anything he would like to see in any 16 17 regard with respect to my bills. He said, "Yes, let me see your bills with respect to defending the NMU in the 18 19 suit by Mr. Curran." Perry brought a contract suit in the Supreme 20 Court of the State of New York against the NMU on his 21 contract. I defended that contract and counter-claimed against Mr. Perry. Neither of us were successful on 23 summary judgement motions. But, at any rate, I did bill

some \$4,000 to the NMU for the defense of the NMU in that

1 549 mc.it 2 case. I have shown Mr. McInerney a breakdown on an hour by hour, day by day basis of that billing. I also defended Mr. Curran in a case brought by an individual named Levinson. I also showed Mr. McInerney a day by day breakdown of that billing, because that resulted in a defendant's verdict before Judge 8 Cannella, so that I don't think they have anything to do 9 with the application that we have before your Honor these 10 bills here. I was paid for separate litigations which 11 have been terminated or are in the process of being termi-12 nated. The bills before your Honor relate solely to the 13 case of the defense of Mr. Shannon Wall and Mr. Joseph 14 Curran and Mr. McInerney's case brought on behalf of Mr. 15 Morrissev. The Court: There are 2 1/2 hours here on pretrial in 16 17 U.S. versus Wimbush. 18 MR. MC INERNEY: Another dissenting member of 19 the NMU. 20 THE COURT: Anything to do with us? 21 MR. MC INERNEY: Not a thing to do with this 22 case. That is another case. THE COURT: I didn't remember Wimbush. 23 24 MR. ALTIER: That perhaps is in error. If 7 25it is billed to Wimbush, that is an error, your Honor.

THE COURT: Which decision are you referring

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negligent?

2 to?

MR. ALTIER: 483 Fed. Second, 480, page 865.

It is in my memorandum of law, your Honor.

In other words, your Honor held that the trustees -- and it was sustained -- that the trustees were not as careful as they should be.

THE COURT: They were pretty negligent.

MR. ALTIER: That is true.

THE COURT: Weren't Curran and Wall pretty

MR. ALTIER: Absolutely not. There has been no finding in this case that they were negligent. There has been a specific finding in this case that they acted

in good faith, relying upon the advice of counsel.

If I may be heard on that just for a moment, we have to realize we are talking about the payment to that pension fund where three Judges on the Court of Appeals -- one of them differed -- the Court of Appeals said it was a perfectly valid payment, so that we have a test and a measure. This goes back, I know, to the original issue, but you have a test as to the complexity of the propriety of that payment and a legal questionas to the propriety of that payment when you have a dissenting Judge in the Court of Appeals saying that payment was

perfectly proper.

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You have the trustees and you have the lawyers. I am not getting involved in all of these issues as to all of their responsibilities, but with respect to my two lay clients, taking the letters that they got and turning to the union counsel and saying: What do we do with this? And the union counsel says: Go ahead and pay it. Then the Court of Appeals says specifically they acted in good faith. They did what they should have done in that respect.

THE COURT: I've got to look at that. It seems to me, as I recall it, this all stems from the incident in connection with Perry's check, doesn't it?

MR. CHAPMAN: That is correct.

MR. ALTIER: That is correct.

THE COURT: The incidents on that great day when he got this pension fund advanced in date, and I think Mr. McInerney mentioned it this morning, something about Karchmer and Wall saying "When he speaks the community listens," something to that effect. Didn't it arise from that?

MR. ALTIER: Yes, the Court of Appeals has spoken on this issue.

THE COURT: I'll take a look at that.

553 1 mcjt MR. PHILLIPS: I have it here, if you want 2 3 to see it. MR. ALTIER: Page two. MR. PHILLIPS: In addition to paragraphs A 5 and B on page 485 in which the Court of Appeals gives 6 7 its opinion citing your opinion. 8 THE COURT: All right. I have seen it. 9 MR. MC INERNEY: I might call your attention to an excerpt from your Honor's opinion after the hearing 10 on the Perry situation in which you said, and I quote, 11 12 13 14 President of NMU, had a fiduciary responsibility under Section 501(a) of LMRDA. 29 U.S.C. 501 (a), with respect 15 to the funds of NMU. For the purposes of Section 501(a) 16 the funds paid by the NMU to the officers pension plan 17 18 and by it to Perry were funds of NMU. "Curran negotiated the Perry Employment 19 contract and signed it on behalf of NMU, and had also 20 filed agreement and declaration of trust. Although he 21 dismissed plaintiffs' request as propoganda, Curran knew 22 that the plaintiffs had requested NMU to institute this 23 action and to recover monies paid to the officers pension 24

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fund for the account of non-officers on the ground that

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such payments violated the NMU competition and i' was charged that Perry was a non-officer. Curran was in a position of trust to expend NMU funds only in accordance with the NMU constitution. Curran also knew or should have known that the agreement and the declaration of trust did not authorize the pre-payment of contributions to the officers' pension plan, nevertheless, on December 18, 1968 when he fired Perry for the first time he instructed Breit to prepare a check from NMU funds in the amount of \$41,250.01 to be paid to the officers' pension plan for Perry's account, and on the following day he signed the check which was then forwarded to the officers' pension plan, however, the \$41,250.01 has been recovered by NMU, so that even if he violated his fiduciary duty, there is no occasion for surcharging him in this amount." So that you have ameady held that as a fact.

THE COURT: What was the date of that memorandum?

MR. MC INERNEY: I don't have the date. I can get it for you. It is your decision which led to the appeal that went -- I think it was 5351 Fed. Supplement, but I am not sure.

Then you went on to say that "Curran dominated the people who had anything to do with the payment from

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the officer's pension plan to Perry. Karchmer testified,

Well, to go into Joe Curran is a very simple process."

Then, with respect to Wall you said:

"Wall, Secretary-treasurer of NMU knew that plaintiffs' had requested NMU to institute action to recover monies attributed to the officers' pension plan with respect to non-officers. Indeed, he testified that he brought this to the attention of Curran and the NMU lawyers."

Again, your Honor, I would suggest to the Court that, as your Honor has indicated, Curran and Wall were in at least the very same position that Messrs.

Karchmer and Segal were in and probably more so, because as I testified, again had they lifted their little finger all this would have been resolved and we wouldn't have been there and there wouldn't have been all this litigation, all the appeals and all the petitions for writs of certia rare and all of this expense would have been — if Curran and Wall had lifted their little finger that would have been done.

MR. ALTIER: If I may just reply to that, your Honor, I think we are really speculating and we are talking about matters not in this record. What is in this record, going on from the review of the opinion

that Mr. McInerney just read from is the fact that the Court of Appeal said that the District Court held that the evidence established that Wall played no part in the events of January 16 and the payment to Perry.

There is nothing in the record to indicate that the ruling is incorrect. There is an earlier part where your Honor said specifically "Good faith is the law of the case."

THE COURT: All right, I guess I will just prove that this case has gone on too long. Does anybody else wish to say anything on this? I would like to think about this. I would like to reserve on it.

Do you want to file anything? You haven't filed anything.

MR. MC INERNEY: I haven't. I would like to consider that.

THE COURT: If you want to file anything I will give you a week. Otherwise I will do it on the basis of what I have heard today. Is that fair enough?

MR. PHILLIPS: One more application, your Honor and that is --

MR. ALTIER: Fair enough.

MR. MC INERNEY: Might I just say that I have mailed to your Honor copies of the briefs. I

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would like to have those deemed a part of this record.

THE COURT: You mean the briefs on appeal?

MR. MC INERNEY: Yes, your Honor.

THE COURT: Why don't we mark them?

MR. MC INERNEY: Yes, sir, your Honor.

MR. PHILLIPS: I have an application to make.

THE COURT: I will hear it in a second.

MR. MC INERNEY: I would offer those in

evidence.

THE COURT: I take it there is no objection to these public records. I guess you can receive those in evidence.

(Plaintia s' Exhibit 3 received in evidence.)

MR. MC INLRNEY: Thank you, your Honor.

MR. PHILLIPS: I will now change hats and appear for the National Maritime Union. This is an application which is a conditional application in the event that any sums of money are awarded to Mr. Altier by this Court by reason of his successful defense of the Messrs. Curran and Wall for acts performed by them in their official capacity while acting as officers of the union. We submit, your Honor, it would be equitable and proper that this Court then enforce the Constitution of the National Maritime Union --

1 553 me!t THE COURT: Why? 3 MR. PHILLIPS: -- which has an express provision at Article 21, Section 4 -- this is an Exhibit in this case. I am sure it has been lost somewhere in 5 the archives and I respectfully hand up to the Court another copy. 8 THE COURT: All right. Mark this as 9 Defendant NMU Exhibit A. 10 (Defendant NMU Exhibit A marked for XX11 identification.) 12 MR. PHILLIPS: In substance, this provides 13 that in the event that any action or proceeding is brought against an officer by a member for alleged acts of mis-14 conduct during office and it is successfully defended, 15 16 the member and of course expenses are incurred by the 17 union in connection with that successful defense. The member or members in this case, the plaintiffs Morrissey, 18 Padilla and Ibrahin, who were directly or indirectly 19 20 responsible for bringing this action and proceeding should 21 reinturse the union. 22 It is true that this has never been raised in this proceeding heretofore because it was not ripe 23 for raising since until this litigation was finally dis-24 posed of it was not known whether or not Messrs. Curran

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and Wall would be successfully defended. Their successful defense is now the law of this case.

Now, it is also true that a separate action should be commenced. However, all of the narties are before this Court. This Court has asserted jurisdiction of the fund. It seems to me that in simple equity, if the union has any rights in this matter it should be asserted here and now before these members recover any additional monies, because the counsel fees, while counsel has benefited from them, ostensibly and theoretically, the counsel fees are being awarded to Mr. Morrissey to reimparse his counsel in this case for the unsuccessful attack on union officers.

I have submitted my memorandum including a few cases holding that a Constitution is a lawful and binding contract between a union and its members. The argument may be made that somehow this contravenes public policy, but I urge to the Court that if we look to the legislative history of 501 and particularly 501 (b) in the cases arising thereunder, we find that the Congress was deeply concerned that there should be no harrassment of unions; that 501 should not be used as a vehicle for any dissident, for any grieving person, or any unsuccessful candidate in an election to vent his spleen by

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bringing unfounded charges against his union officers and gives them and the union some relief from this kind of charge. I submit that this article is completely consistent with the Congressional policy.

THE COURT: This is too much history in this case. There isn't any doubt, is there, that going back in the origins of this case the union wasn't living up to its own Constitution? You can't get away from that. That is what started the whole business.

MR. PHILLIPS: Yes, your Honor, that is true.

THE COURT: It took the plaintiffs to bring it to the Court's attention.

MR. PHILLIPS: No question about that.

THE COURT: I don't quite see that --

MR. PHILLIPS: However, the Court has also found -- this has been affirmed twice by the Cour. of Appeals -- that Messrs. Curran and Wall did not breach their fiduciary responsibility; that this was done and the culpable person were other persons who were the trustees of the officers' pension plan, not Messrs. Curran and Wall, and again this motion is directed to a very narrow issue and that is Curran and Wall and no other persons.

THE COURT: You are saying that if they are allowed any fees out of the pension fund under this cross motion, you say then I should direct under the Constitution that the plaintiffs reimburse the union; is that correct?

MR. PHILLIPS: Correct, your Honor. Not out of the pension fund, but out of the union funds.

THE COURT: Out of the union funds, I understand. I understand that.

MR. PHILLIPS: In other words, if Mr. Altier is successful in his motion that Mr. Morrissey should reimburse the union for those funds; yes, your Honor.

THE COURT: Do you have any views on that, Mr. Altier?

MR. ALTIER: No, your Honor. I didn't agree with the clients that I would be paid if they had some remedy over or --

THE COURT: What do you say about that?

MR. MC INERNEY: I think it was King Lear
who said that "Ingratitude is the greatest sin of all."

Here is a union that comes in that has benefitted to the tune of \$674,222.60 by your Honor's first judgement and of course the officers' pension funds also derived the benefit of almo a \$300,000 with interest, so

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2	they have gotten almost a million, a little over a
3	million dollars. Now they have got three poor seamen.
4	Two of them don't know anything at all about this
5	suit. Mr. Padilla and Mr. Ibrahim I think were in my
6	office in 1969 or 1970 two or three time aniece. I
7	made their acquaintance and I am sure they don't know
8	the status of the suit at all, except they know they
9	have conferred some benefit on their brother union
10	members. Mr. Morrissey, of course, has taken an active
11	role and has been very helpful in getting documents for
12	me and in coming to and from court for different purposes.
13	He has been a very, very helpful and ideal client. But
14	he derives absolutely no tenefit out of this action
15	other than his percentage as a union member, so that he
16	has 150 thousandths of the benefits. He has potten
17	nothing out of this. Mr. Phillips doesn't seem to
18	understand. The point is, of course, everything that
19	Duer & Taylor has gotten has come by virtue of the
20	Court's allowances. We have been serving the membership
21	and all our services were designed for the membership.
22	Morrissev got nothing personally out of our services and
23	I can see just no reason in the world why Mr. Morrissey
24	who is, as I say, an ordinary seaman and has not even

sailed because he can't get employment for the past six

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or seven months -- they want to saddle him with these legal fees. It is the most incredible thing I ever heard of.

have done on Section 501, which your Honor must know has been considerable, I have never come across a situation where any union has ever had the temerity to come into Court and say: saddle the union members with the fees, no matter what the question was. I think it is the most malicious thing I have ever heard of.

MR. PHILLIPS: May I respond briefly, your Honor? Mr. McInerney is losing sight of the trees for the forest. We all know what this litigation has established in the law and the law that it made. However, this motion is addressed to a very narrow point. We are addressing ourselves to two individuals, two officers of the union acting in their official capacity, who have been found faultless by this Court and the Court of Appeals on two separate occasions. They are union officials and are entitled to freedom from harrassment, and if the union is required to —

THE COURT: I don't know about a lot of other things, but I'm not convinced that they have been subject to harrassment in this case. I have, frankly,

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2	not been convinced of that, but the thing started off
3	innocently enough. The union wasn't even observing its
4	own Constitution and they were putting people in this
5	officers' pension fund that didn't belong there. That
6	was the thing that started this.
7	It is true, I think, as a result of this
8	litigation that the union has benefitted a bit. So has
9	the sension fund. Isn't that true?
10	MR. PHILLIPS: Mr. Freedman benefitted the
11	union by over according to the Court of Appeals!
12	decision, Mr. Preedman's actions benefitted the union
13	by over a million dollars on one of the earlier appeals.
14	I am personally addressing myself to a very, very narrow
15	point here and I think we have a contract.
16	THE COURT: Let me ask you this: assuming
17	that this thing should be here, not some other Court,
18	which I'm not clear on, it doesn't arise, does it, unti-
19	the fees are awarded to Mr. Altier?
20	MR. PHILLIPS: That is correct, your Honor.
21	THE COURT: Am I sitting here as a court of
22	law or a court of equity?
23	MR. PHILLIPS: Court of equity.
24	THE COURT: I would think so.
25	Okay, thank you.

MORRISSEY V. CURRAN

69 Civ. 442

Motion is denied.

The long record in this case discloses no basis for finding that Curran and Wall, who were officers of the Union and therefore serving in a fiduciary capacity to its membership under the Labor Management Reporting and Disclosure Act (29 U.S.C. §501(a)), should have their attorneys' fees paid by the Union. Indeed the record is clear that they did not maintain the high standard required under section 501(a) with respect to the Officers Pension Fund.

It is so ordered.

Dated: New York, N.Y. June 20, 1976

/s/ Dudley B. Bonsal U. S. D. J. ORDER DATED JULY 8, 1970.

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK.

Upon reading the mandate of the United States Court of Appeals for the Second Circuit dated February 20, 1970, filed in this Court May 22, 1970, and the Opinion of the United States Circuit Court of Appeals dated February 20, 1970, and all the pleadings and proceedings heretofore had herein,

Now, on motion of Duer & Taylor, attorneys for plaintiffs, it is

ORDERED that the Order of this Court herein dated July 11, 1969, and the Judgment entered July 18, 1969, is in all respects confirmed; and it is further

ORDERED that the June 24, 1969 Amendments to the NMU Constitution, having been found exculpatory by the Court of Appeals and hence prohibited by \$501(a) of the Labor Management Reporting Act of 1959, are declared to be void and without effect and defendants are enjoined from acting in reliance upon them, and the Order of this Court filed July 9, 1969 is vacated; and it is further

ORDERED that the defendants serve the plaintiff with a copy of the account and file the original thereof with the Court forthwith not later than July 31, 1970; plaintiffs shall serve and file objections to the accounting, if any, within thirty days after service upon them of the

ORDER DATED JULY 8, 1970

accounting; plaintiffs shall commence discovery in support of their objections after the filing of said objections and such discovery shall be completed within 60 days after the filing of said objections; provided, that the time limits imposed may be extended by stipulation among the parties, or absent such stipulation, by order of the Court for good cause shown; and it is further

ORDERED that the costs allowed to plaintiffs against the defendants in the Court of Appeals amounting to five hundred and thirteen dollars and seventy-one cents (\$513.71) be made a judgment of this Court in favor of the plaintiffs against the defendants and that execution issue therefor;

And it appearing that plaintiffs have made a reasonable showing that they are likely to succeed in this action, and it is further

ORDERED that the defendants are enjoined from employing counsel paid or to be paid with union funds; and it is further

ORDERED that this Court retains jurisdiction for the purpose of the carrying out of this Order.

Dated: New York, New York July 8, 1970.

DUDLEY B. BONSAL United States District Judge ORDER DATED SEPTEMBER 11, 1974

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK.

Upon the pleadings, proceedings and proof heretofore had herein, and upon the decisions in writing of this Court dated and filed May 1, 1974 and August 26, 1974, respectively, it is hereby

ORDERED, that plaintiffs' motion to hold defendants

Joseph Curran, Shannon Wall, Martin Segal, Abraham E.

Freedman and Leon Karchmer in contempt of Court is denied

in all respects; and it is further

ORDERED, that plaintiffs' motion for the allowance of additional attorneys' fees of \$72,000 is denied in all respects, and it is further

ORDERED, that plaintiffs' motion for the entry of judgment against the National Surety Corporation in the amount of \$291,833,30 is denied in all respects; and it is further

ORDERED, that plaintiffs' motion for reargument of this Court's decision of May 1, 1974 is denied in all respects; and it is further

ORDERED, that the motions of defendants Martin Segal and Leon Karchmer for reargument of this Court's decision of May 1, 1974 are each denied except as otherwise provided below in this Court's decision of August 26, 1974; and it is further

ORDER DATED SEPTEMBER 11, 1974

ORDERED, that the Clerk of the Court enter judgment in favor of the N. M. U. Officers' Pension Fund against defendant Martin Segal in the amount of \$31,906.72, and it is further

ORDERED, that the Clerk of the Court enter judgment in favor of the N. M. U. Officers' Pension Fund against Leon Karchmer in the amount of \$30,155.08; and it is further

ORDERED, that as to any statements rendered to defendant Martin Segal for attorney's fees and disbursements incurred and to be incurred by him in this action subsequent to June 30, 1973, defendant Segal shall pay 39% of any such amount and the N. M.U. Officers' Pension Fund shall pay 61% of any such amount; and it is further

ORDERED, that as to any statements rendered to defendant Leon Karchmer for attorneys' fees and disbursements incurred and to be incurred by him in this action subsequent to June 30, 1973, defendant Karchmer shall pay 39% of any such amount and the N. M. U. Officers' Pension Fund shall pay 61% of any such amount; and it is further

ORDERED that a hearing be held on September 27th

1974 at 10:00 A.M. in Room 706 on the application by plainitiffs'

ORDER DATED SEPTEMBER 11, 1974

attorneys for fees and disbursements in connection with services rendered in the proceedings herein and on appeals subsequent to November 15, 1972.

DATED: New York, New York September 11th, 1974

DUDLEY B. BONSAL U. S. D. J.

JUDGMENT ENTERED: 9/17/74

Raymond Burghardt

Clerk

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

JAMES M. MORRISSEY, JOSEPH F DILLA, RALPH IBRAHIM, individually and on behalf of the members of the NATIONAL MARITIME UNION OF AMERICA,

69 Civ. 442 (DBB)

AFFIDAVIT

- against -

JOSEPH CURRAN, SHANNON WALL, WILLIAM PERRY, MARTIN SEGAL, ABRAHAM E. FREEDMAN and LEON KARCHMER, defendants.

plaintiffs

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

ARTHUR E. MC INERNEY, being duly sworn, deposes and says:

I make this affidavit in response to the affidavits of Ned Phillips sworn to the 8th day of April, 1976. The Phillips affidavits come with particular ill grace for they disregard what this action was all about.

In the first place, as a result of Mr. Morrissey's efforts \$674,222.60 was returned to the coffers of the NMU. In addition, plaintiffs obtained judgments in favor of the officers' Pension Fund against Mr. Perry (in the sum of \$263,307.00) and against Mr. Freedman (in the sum of \$272,740.50). The latter was collected in full.

They overlook the fact that Messrs. Curran and Wall, although not surcharged, were not without fault in discharging their duties as 501 fiduciaries.

Messrs. Curran and Wall had a duty to take action

upon receipt of plaintiff's request in May of 1968. Had they done so there would have been no payment to Mr. Perry on January 16, 1969 and the hundreds of thousands of dollars of legal expenses charged to the union would have been saved. This court has already held that Mr. Curran had the power to have rectified the difficulties which precipitated this law suit. This court found as facts:

"Curran, President of NMU, had a fiduciary responsibility under Section 501(a) of LMRDA (29 U.S.C. §501(a)) with respect to the funds of NMU. For the purposes of Section 501(a), the funds paid by NMU to the Officers Pension Plan and by it to Perry were funds of NMU. Curran negotiated the Perry employment contract and signed it on behalf of NMU, and had also signed the Agreement and Declaration of Trust. Although he dismissed plaintiffs' request as propaganda, Curran knew that the plaintiffs had requested NMU to institute this action to recover monies paid to the Officers Pension Fund for the account of non-officers on the ground that such payments violated the NMU constitution, and that it was charged that Perry was a nonofficer. Curran was in a position of trust to expend NMU funds only in accordance with the NMU constitution. Curran also knew or should have known that the Agreement and Declaration of Trust did not authorize the pre-payment of contributions to the Officers Pension Plan. Nevertheless, on December 18, 1968, when he fired Perry for the first time, he instructed Breit to prepare a check from NMU funds in the amount of \$41,250.01 to be paid to the Officers Pension Plan for Perry's account, and on the following day he signed the check, which was then forwarded to the Officers Pension Plan. However, the \$41,250.01 has been recovered by NMU, so that even if he violated his fiduciary duty, there is no occasion for sur-charging him in this amount.

"The evidence indicates that Curran dominated the people who had anything to do with the payment from the Officers Pension Plan to Perry. Rarchmer testified, "Well, to go in to Joe (Curran) is a very fearful process."

This court said of Wall:

"Wall, Secretary-Treasurer of NMU knew that plaintiffs had requested NMU to institute action to recover monies attributed to the Officers Pension Plan with respect to non-officers. Indeed, he testified that he brought this to the attention of Curran and the NMU lawyers."

But he did nothing to stop the payment of \$222,200.00 to Mr. Perry.

On the most recent appeal it has already been pointed out in my main affidavit that the plaintiffs were in a position of "taking a bear by the tail". The trustees Karchmer and Segal were seeking to have the decision of this court reversed. That would have resulted in a loss to the trust of some \$80,000 had they succeeded in their appeals.

The attorneys for NMU abdicated their responsibility and did nothing to prevent or answer the appeals taken by Segal and Karchmer.

It was incumbent upon plaintiffs therefore to carry on their work for the union and for the fund.

I did all in my power to persuade the attorneys for Karchmer and Segal not to go forward. But my protestations fell on deaf ears.

Not only did we succeed 100% in defending the judgment of this court which directed the return of some

\$7,059.84.

In all there was some \$87,059.84 returned to the fund or which will be returned to the fund as a result of the most recent efforts of plaintiffs' counsel.

It is not denied that the attorney for Karchmer and Segal billed and were paid more than \$22,500 for their services on the most recent appeals. They insisted on the additional work and were wholly unsuccessful. Their work was done entirely in opposition to their trust.

This is a suit in equity and under any equitable principle it would be unjust to charge the plaintiffs for any part of the defendants' legal fees.

In the first place, it is suggested that defendants Curran and Wall did not have "clean hands".

In the second place, the provisions of the constitution upon which the defendants rely are in contravention of sound public policy.

In the third place, the plaintiffs who have secured a substantial benefit to the union had nothing to gain financially except to the extent that they were members of the union and that they would share in any benefit obtained for the class - they had nothing else to gain personally. Obviously the class who derived the benefit should bear the expense (if it is determined that Messrs. Curran and Wall should not bear it personally).

88a

In the fourth place, there has never been any case brought under Section 501 of the Landrum-Griffin Act that I have been able to find (after exhaustive research on the subject) which charges a plaintiff proceeding in good faith for any plaintiff for that matter) with any attorneys' fee incurred by any defendant.

Finally, the sections of the NMU Constitution quoted at length in Mr. Phillips' affidavits (and in the brief submitted in support of the NMU's proposition) have mothing at all to do with anything except "Trials of Officers" (Article 19 NMU Constitution) the "Trials of Members" (Article 20 NMU Constitution) and the "Penalties" for intra-union procedures (Article 21 NMU Constitution). In other words, there is nothing in the NMU Constitution which would purport to govern the exercise of this Court's sound discretion for actions brought under Title V of the Landrum-Griffin Act.

/s/ Arthur E. McInerney
Arthur E. McInerney

Sworn to before me this 13 day of April, 1976

's/ John S. Chapman, Jr.
Notary Public